

S.B. Civil Misc. Appeal No.1079/2005

United India Insurance Company Ltd.

vs.

Smt. Sunita and others.

Date : 6.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manoj Bhandari, for the appellant.

Mr. V Agarwal, for the respondents.

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Heard learned counsel for the parties.

According to learned counsel for the appellant, it was a case of collusion of two vehicles, one vehicle hit another vehicle and ran away. The claimants did not implead the owner and driver of the vehicle which was taken away from the spot. It is also submitted that it is a case of contributory negligence still the Tribunal has awarded the compensation against owner of one of the vehicle and consequently, held the appellant liable for payment of compensation.

I have considered the submissions of learned counsel for the appellant.

It is clear from the reasons given by the Tribunal that the Tribunal, after appreciation of evidence, recorded a finding that it was a fault of driver of the vehicle

insured with the appellant and this finding cannot be challenged by the appellant. Therefore, no ground survives about non-impleading owner and driver of the other vehicle.

Learned counsel for the appellant submits that the Madhya Pradesh High Court in the case of Jugal Kishore and another vs. Ramlesh Devi and others reported in 2004 (1) T.A.C. 778 (M.P.), where there was a collusion of two vehicles and one vehicle was taken away making the case of hit and run, held that even in that case, the case of contributory negligence can be proved and the entire liability cannot be of insurance company of one of the vehicles.

The judgment relied upon by the learned counsel for the appellant has no application to the facts of the present case in view of the fact that despite the collusion of two vehicles, it cannot be said that in all cases, there shall be contributory negligence. In this case, as stated above, the negligence of driver of one vehicle has been found proved.

I do not find any merit in this appeal and accordingly, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya